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CONCORD, N.H.

Mr. Adelard E. Cote, Commissioner
Labor Department
Star Building
Pleasant Street
Concord, New Hampshire

Dear Mr. Cote:

This is in response to your request of
December 2, for our opinion as to whether a husband and wife may form
a business partnership.

RSA 281:2 Definitions

"I. Employer, means a person, partnership, associa-
tion, corporation, and the legal representatives of a
deceased employer, or the receiver or trustee of a
person, partnership, association or corporation, who
usually employs five or more persons, whether in one
or more trades, businesses, professions or occupations,
and whether in one or more locations, except farm
labor and domestic service. . . ."

In an opinion dated April 8, 1954, this
office ruled that for the purposes of this section a partnership should
be treated as an entity and that other employees of the individual
members of the partnership should not be considered in determining
whether the partnership employs "five or more persons."

You now inquire as to whether a husband
and wife, filing as a partnership, should be so treated.

In Peoples Trust Co. v. Merrill, 78 N.H.
329 it was held that a husband and wife could not enter an agreement of
partnership. The Court pointed out that the common law refused to re-
cognize contracts between husband and wife and that the then existing
statute enlarging the powers of married women preserved the common law
rule in this respect by the proviso "that the authority hereby given to
make contracts shall not effect the laws heretofore in force as to con-

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tracts between husband and wife." This proviso was deleted by chapter 193, Laws of 1949.

It would therefore appear that under the law, as presently written, a husband and wife may legally form a partnership.

It should be pointed out, however, that both this opinion and the prior one are solely for your guidance and cannot be relied upon by a husband or wife filing as partners in the event that litigation subsequently arises with employees of the partnership. Your jurisdiction in this matter consists of prosecuting subject employers who do not procure insurance or in determining coverage at a hearing following an accident. In the first instance I would advise against prosecution. In the latter your decision is, of course, subject to review by the courts. It would therefore appear appropriate for individuals so filing to consult with private counsel in order to be fully protected. It might be that private counsel would advise that full protection can only be guaranteed by procuring insurance.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB/T